

INTEROFFICE MEMORANDUM

DATE: July 31, 2006 **PHONE:** (760) 243-8600

FROM: Gary S. Roth
Supervising Deputy District Attorney
Victorville Office

TO: Michael W. Risley
Assistant District Attorney



SUBJECT: OFFICER INVOLVED SHOOTING
Investigating Agency: San Bernardino County Homicide Division
DR# 170604718
Suspect: Larry Douglas Moore DOB 6-7-84
Involved Officer: Deputy Joshua Conley
Date of Incident: April 6, 2006

FACTS

At approximately 11:15 p.m. on Thursday, April 6, 2006, Larry Douglas Moore and Fredrick W., both parolees and both Pomona Piru Blood criminal street gang members, committed an armed home invasion robbery at a residence in the 13000 block of Primrose Lane in the City of Victorville. At the time, Moore had a felony warrant for his arrest for failure to appear on a Fontana felony drug case. Moore was also on parole for a 2003 felony negligent discharge of a firearm conviction.

During the home invasion robbery, Moore produced a laser sighted 9mm Glock semi-automatic handgun from his waistband, pointed it at the robbery victims, threatened them, and demanded their money. Frederick W. had a second handgun and also pointed it at the victims, threatening to kill them. After the robbery, Moore and his co-defendant fled the scene in a dark colored Mitsubishi Gallant. After the robbery, a witness immediately called 911 to report the crime.

Victorville Sheriff's Sgt. John Mattke responded to the 911 call and drove towards the robbery scene. Before he arrived, he was flagged down by one of the witnesses who gave a description of the suspects and their vehicle. About two blocks from the scene of the robbery, Sgt. Mattke spotted the fleeing suspect vehicle. Moore was the passenger and Frederick W. was the driver. Sgt. Mattke attempted to conduct a vehicle stop by turning on his emergency lights and siren. The vehicle failed to stop,

and sped away, trying to evade pursuing patrol cars. Assisting in the pursuit, and following Sgt. Mattke, was Victorville Sheriff's Deputy Joshua Conley in his patrol car, and behind him was Victorville Sheriff's Deputy Lucas Gaytan.

The pursuit continued for about a mile and a half. During this time, the suspect vehicle reached speeds of approximately 60-70 mph through a residential area, ran stop signs, and became airborne when it hit dips without slowing down. During the pursuit, Sgt. Mattke observed objects being thrown out of the suspect vehicle, and initially reported that they were guns. At the corner of Northstar and El Evado Roads, the suspect vehicle failed to successfully negotiate the turn and spun out. Sgt. Mattke rammed the driver's side of the vehicle in an attempt to keep it from fleeing.

Moore immediately jumped out of the passenger side and began running north on El Evado. Concealed on his person were two fully loaded handguns, the semi-automatic Glock 9mm with laser sight that he used in the robbery, and a second handgun, a Springfield Armory 9mm semi-automatic.

Dep. Conley attempted to drive around the suspect vehicle to pursue Moore. The suspect vehicle continued to move and ended up colliding with Deputy Conley's patrol car. Dep. Conley continued to drive after Moore and attempted to cut him off. Moore then changed directions and jumped over a backyard block wall that runs parallel to El Evado. Dep. Conley got out of his patrol car and chased Moore on foot. In the meantime, Sgt. Mattke held Frederick W. at gunpoint and arrested him.

Moore continued to flee on foot with Dep. Conley in foot pursuit. Moore ran through the backyard and went over a six-foot wood fence on the opposite side of the yard. Dep. Conley was yelling at Moore to stop, but Moore failed to comply with his orders. Moore ran through the front yard of the residence to the street (located at the intersection of Pony Trail and Santa Fe Trail.) When he reached the street, unbeknownst to Dep. Conley, the Glock 9mm handgun fell or was dropped by Moore. Moore still had the loaded Springfield Arms 9mm handgun in his possession. This gun was likely in Moore's waistband, because Dep. Conley noticed that Moore stopped swinging his arms as he ran, but held both hands in the waistband area in front of his baggy jacket.

Moore then tripped and fell, and Deputy Conley saw the Springfield Arms 9mm handgun fly from Moore onto the ground. Moore got up and started to run but then stumbled again. Dep. Conley tried to cut off Moore and ran at him at an angle. Dep. Conley got in front of Moore but then Dep. Conley slipped and fell to his knees.

Moore got up and began running the opposite direction, south, back towards where he had dropped the Springfield Arms gun. Moore continued to run in an abnormal manner, not pumping his arms, but holding both hands in the front of his jacket, at his waistband, as if he were still holding a gun. Dep. Conley believed Moore was holding a second gun. Dep. Conley knew from the 911 call that multiple firearms were used in the home invasion robbery. He knew from training that if a suspect has one gun, he may have more. Dep. Conley drew his handgun and pointed it at Moore. Moore then suddenly

turned his head back toward Dep. Conley as if he was preparing to turn completely and face him. Moore's hands were still at his waistband and Dep. Conley believed Moore was about to swing around, pull out a second handgun, and shoot him. To protect himself from being killed, Dep. Conley fired his gun at Moore three times. Two of the shots struck Moore, and he later died from the wounds.

Just before the shooting, Dep. Gaytan had made his way to the street where Dep. Conley and Moore were. Dep. Gaytan saw Moore turn towards Dep. Conley and reach into his waistband with his hands, just before Dep. Conley fired. Dep. Gaytan also believed Moore was about to pull a gun and shoot Dep. Conley.

APPLICABLE LAW

Self-Defense Against Assault (CALJIC 5.30)

"It is lawful for a person who is being assault to defend himself from attack if, as a reasonable person, he has grounds for believing and does believe that bodily injury is about to be inflicted upon him. In doing so, such person may use all force and means which he believes to be reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent."

Self-Defense-Assailed Person Need Not Retreat (CALJIC 5.50)

"A person threatened with an attack that justifies the exercise of the right of self-defense need not retreat. In the exercise of his right of self-defense such person may stand his ground and defend himself by the use of all force and means which would appear to be necessary to a reasonable person in a similar situation and with similar knowledge; and such person may pursue such assailant until he has secured himself from danger if that course likewise appears reasonably necessary. This law applies even though the assailed person might more easily have gained safety by flight or by withdrawing from the scene."

Self-Defense-Actual Danger Not Necessary (CALJIC 5.51)

"Actual danger is not necessary to justify self-defense. If one is confronted by the appearance of danger which arouses in his mind, as a reasonable person, an honest conviction and fear that he is about to suffer bodily injury, and if a reasonable person in a like situation, seeing and knowing the same facts, would be justified in believing himself in like danger, and if that individual so confronted acts in self-defense upon such appearances and from such fear and honest convictions, such person's right of self-defense is the same whether such danger is real or merely apparent."

Arrest or Detention-Use of Reasonable Force (CALJIC 16.106)

“A peace officer who is making an arrest may use reasonable force to make the arrest, or to prevent escape, or to overcome resistance. The officer need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested...”

CONCLUSION

Deputy Joshua Conley reasonably believed he was about to be killed by a fleeing armed robber who was pulling a handgun from his waistband to shoot the deputy. Under these circumstances, Dep. Conley’s shooting of Larry Moore was legally justified under the laws of self-defense outlined above.

Gary S. Roth
Supervising Deputy District Attorney
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